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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,643	10/31/2001	Bradley T. Hyman	19603/3541 (CRF D-2694A)	2817
7590	10/06/2003		EXAMINER MANTIS MERCADER, ELENI M	
Michael L. Goldman NIXON PEABODY LLP Clinton Square P.O. Box 31051 Rochester, NY 14603			ART UNIT	PAPER NUMBER
			3737	
			DATE MAILED: 10/06/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/001,643

Applicant(s)

HYMAN ET AL

Examiner

Eleni Mantis Mercader

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gervais et al.'717 in view of Alfano et al.'386.

Gervais et al.'717 teach a method of detecting neurodegenerative diseases by detecting amyloid plaques or neurofibrillary tangles in a mammal by activating the tissue of interest, including the brain, in-vivo and by using optical imaging under conditions effective to promote a fluorescence characteristic in order to diagnose amyloidosis related diseases such as Alzheimer's in early stages (see paragraphs 9-12, 35 and 156; describing detecting fluorescence to optically image the brain in order to diagnose diseases such as Alzheimer's).

While Gervais et al.'717 do not explicitly teach comparing the fluorescence characteristic to a standard fluorescence emitted by exciting healthy brain tissue of the mammal under the same conditions used to carryout the activating, it is well within the knowledge of skilled artisans that there has to be some type of comparison to a standard in order to determine the significance of what is being identified in the image. In other words, if there is a luminous site in the image, either comparison with a normal image or some other type of normalization will be undertaken to ensure that what is being observed is of significance. Such image processing is described by

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Alfano et al.'386, in col. 6, lines 17-52, wherein subtraction between images and normalization is undertaken in order to obtain a better image and thereby allow diagnosis of disease.

Photo-activation by laser and pulsed radiation are well known imaging expedients to skilled artisans.

*Conclusion*


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Averback et al.'947 teach a method for detecting amyloid-containing lesions by autofluorescence.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni Mantis Mercader whose telephone number is 703 308-0899. The examiner can normally be reached on Mon. - Fri., 8:00 a.m.-6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703 308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0858.

  
Eleni Mantis Mercader  
Patent Examiner  
Art Unit 3737

EMM.